THE HON'BLE Ms. JUSTICE G.ROHINI

–

WRIT PETITION No. 8533 of 2006

Date: 19-06-2006

Between:

S.Bosi Reddy

..... PETITIONER

AND

The Commissioner of Transport,

Government of A.P., BRKR Buildings

Near Secretariat, Hyderabad and three others.

....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

–

WRIT PETITION No. 8533 of 2006

O R D E R:

This writ petition is filed seeking a declaration that the proceedings of the second respondent-Regional Transport Officer, Khammam, dated 22-10-2005, passed under
Sub-Section 5 of Section 55 of the Motor Vehicles Act, 1988 (for short 'the Act') thereby cancelling the registration of the petitioner's vehicle bearing No.AP 16 U 4307 as arbitrary and illegal.

Though the case had a chequered history and this writ petition appears to be the third or fourth round of litigation, for the purpose of the issue involved in this writ petition, it is suffice to note the following facts:

The vehicle in question was seized by the third respondent herein on 01-06-2005 on the ground that it was overloaded and was not accompanied by the required documents. Though the petitioner paid the fine levied as well as the compounding duty, the vehicle was not released immediately. However, it is not in dispute that by virtue of the orders passed by the learned First Additional Judicial Magistrate of First Class, Khammam, dated 20-12-2005, the same was released last week. In the meanwhile, proceedings were initiated under Sub-section (5) of Section 55 of the Act, for cancellation of the registration of the vehicle alleging that the original chassis was replaced by a passenger vehicle chasses. Accordingly, a show cause notice dated 27-09-2005 was issued, which was followed by the impugned order of cancellation dated 22-10-2005.

I have heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

Under Section 55 (5) of the Act, the registering authority is empowered to cancel the certificate of registration, if he is satisfied that the registration of a motor vehicle has been obtained on the basis of documents which were false in any material particular, or the engine number or the chassis number embossed thereon are different from such number entered in the certificate of registration. However, Sub-Section (5) of Section 55 of the Act itself made it clear that such an order can be passed by the registering authority, only after giving the owner

an opportunity to make such representation as he may wish to make and for reasons to be recorded in writing.

In the case on hand, the case of the respondents is that though show cause notice dated 27-09-2005 was issued to the petitioner, who is the owner of the vehicle in question, the same was undelivered by the postal authorities stating that the petitioner was not available at his residence. It is further stated that the motor vehicles Inspector, Khammam-II was also directed to serve show cause notice to the owner in person but the owner was not found at his residence, and therefore show cause notice was pasted at the owner's residence by conducting panchanama on 14-10-2005. Thereafter, the impugned order came to be passed on
22-10-2005 observing that no explanation was received from the owner of the vehicle in spite of the fact that ample time was given to him to submit his explanation.

The petitioner in the affidavit filed in support of the writ petition stated that he was actually residing at Khammam and therefore, the show cause notice, said to have been sent by registered post, was not served on him. He also denied the version of the respondents that the show cause notice was pasted at his residence under panchanama.

Though in the counter affidavit, the respondents asserted that the petitioner was very much staying in the village and also pointed out that as a matter of fact, the order of cancellation of registration was sent by registered post on 22-10-2005, and the same was acknowledged by the petitioner on 24-10-2005, I am not inclined to go into the said disputed question whether there was a valid service of notice on the petitioner.

The fact remains that the impugned order dated
22-10-2005 was passed without taking into consideration the version of the petitioner. The order of cancellation was not passed on merits, but it was only passed on the ground that the petitioner failed to submit his explanation in spite

of sufficient opportunity granted. In these circumstances, I am of the opinion that the interest of justice would be met by granting an opportunity to the petitioner to submit his explanation so that the matter can be decided on merits in accordance with law.

Accordingly, the impugned order is set aside and the petitioner is granted liberty to submit his explanation within one week from today to the show cause notice dated
27-09-2005. Thereafter it is open to the respondents to pass appropriate orders in accordance with law.

The writ petition is accordingly disposed of. No costs.

_____

G.ROHINI, J

Dated:19-06-2006

Note: Furnish C.C., by 20.06.2006.

(B/o)

KLP